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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Preemption of State and Local Zoning and )  
Land Use Restrictions on the Siting, )  
Placement and Construction of Broadcast )  
Station Transmission Facilities )

MM Docket No. 97-18

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS  
AND THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION**

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## Summary

These Reply Comments urge the Commission to adopt a rule — substantially in the form of the proposed rule — preempting certain state and local government restrictions on the placement, construction and modification of broadcast transmission facilities.

Contrary to the characterization of the opponents of Commission action in this proceeding, the rule under consideration should not be viewed as an attempt to intrude upon state and local government prerogative but instead should be viewed as an opportunity for the Commission to provide cooperative guidance to state and local governments, as well as broadcasters, concerning the review of broadcast facility siting applications. It will benefit all parties and, consequently be, in the public interest, for the Commission to remove from state and local debate issues which are comprehensively regulated at the federal level. Likewise, it will be in the public interest for the Commission to provide reasonable procedural constraints on state and local action so that the federal interest in ensuring the swift roll-out of digital television in particular and the advancement of radio communications service in general will be promoted.

The record in this proceeding convincingly demonstrates the need for Commission action. The comments show that broadcasters frequently encounter serious state and local hurdles in attempting to obtain approval to place, construct or modify broadcast facilities. The comments also show that broadcast applications are often subjected to (i) state requirements and/or analyses that conflict with or duplicate federal requirements; (ii) NIMBY<sup>1</sup> objections by opponents of facility

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<sup>1</sup> “NIMBY,” short for “not-in-my-backyard,” reflects the attitude often expressed by landowners in local zoning and land use proceedings opposing what they perceive as an “undesirable” use.

construction; and (iii) associated delay and expense

State and local government commenters raise objections to the perceived scope of the proposed rule. Nonetheless, these commenters do not raise a sustained challenge to the fundamental premise of Commission action — that there is a problem and that the problem can be addressed by a narrowly — tailored rule preempting some aspects of state and local authority. However, it is clear in light of the objections raised by the state and local government commenters that specific modifications should be made to the proposed rule. These modifications include the following:

- \* Procedural constraints. The state and local government commenters are uniform in opposition to the short procedural deadlines contained in the proposed rule. In view of these concerns, the time limits contained in the proposed rule should be established with reference to a “reasonable” time for state and local action on broadcast applications. However, the record does show that state and local proceedings concerning broadcast siting applications sometimes devolve into procedural quagmires; therefore, the adoption of procedural constraints on state and local government action is a critical component of the proposed rule
- \* Substantive preemption. In view of the federal regulation of human exposure to RF emissions, RF interference, and tower lighting, painting and marking, the Commission should preempt inconsistent state and local regulations of these subject areas. No party mounts a sustained challenge to preemption of these areas. However, the balancing test contained in the proposed rule should be revised to allow state and local regulations which are designed to advance “general welfare,” including land use and zoning regulations. Aesthetic considerations, by themselves, however, should not be utilized as a reason to reject broadcast facility applications and, therefore, should be explicitly excluded from state and local consideration.
- \* Review of state/local decisions. The mandatory ADR provision of the proposed rule was the subject of considerable negative comment by state and local government commenters. In light of these comments, ADR should be utilized by the Commission only with the agreement of both parties to a siting dispute. Otherwise, NAB/MSTV continue

to believe that the Commission should adopt ADR measures to facilitate the resolution of "good faith" siting disputes. In addition, NAB/MSTV support the recommendation of the Local and State Governmental Advisory Committee that the Commission designate staff to serve in an advisory role with states and local governments concerning broadcast facility siting and construction.

Many state and local government commenters raise concerns regarding the Commission's jurisdiction to preempt state and local land use and zoning regulations and to adopt the proposed rule. In light of the Commission's broad authority to regulate radio communication services, however, it is clear that the Commission does have jurisdiction to preempt state and local regulations to the limited extent envisioned by the proposed rule. Moreover, it appears that much of the commenters' jurisdictional argument is based on a misperception of the scope of the rule. Likewise, these commenters' concerns regarding potential constitutional issues arising under the First, Fifth, Tenth and Fourteenth Amendments of the United States Constitution are ill-founded.

Finally, the proposed rule does not constitute a major federal action affecting the environment subject to the requirements of NEPA. Contrary to the position of one commenter, the proposed rule will not have any environmental effect because the rule itself will not *cause* the construction or modification of facilities. Moreover, the Commission has adopted an environmental review process which complies with the requirements of NEPA.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Preemption of State and Local Zoning and	)	MM Docket No. 97-182
Land Use Restrictions on the Siting,	)	
Placement and Construction of Broadcast	)	
Station Transmission Facilities	)	

To: The Commission

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS  
AND THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION**

The National Association of Broadcasters ("NAB") and the Association for Maximum Service Television ("MSTV"), by their attorneys and pursuant to 47 C.F.R. §§ 1.415, 1.419, hereby jointly file the following reply comments in connection with the *Notice of Proposed Rule Making* ("Notice"), FCC 97-296, released August 19, 1997, issued in the above-captioned proceeding.

**I. BACKGROUND**

This proceeding arises as a direct result of the Commission's ambitious and mandatory digital television ("DTV") roll-out schedule which it adopted in its *Fifth Report and Order* in MM Docket No. 87-268.<sup>2</sup> This proceeding also arises as an indirect result of decades of frustration experienced by broadcasters generally with state and local processes which are duplicative of federal

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<sup>2</sup> See Notice, ¶ 2 (citing *Fifth Report and Order*, MM Docket No. 87-268, FCC 97-116 (April 22, 1997), 62 F.R. 26996 (May 16, 1997)). Pursuant to this accelerated schedule, television broadcasters in the top ten markets that are affiliated with one of the major four networks must have placed DTV facilities into operation by May 1, 1999; affiliates in the top 30 markets must have placed DTV facilities into operation by November 1, 1999; and all other commercial stations must construct DTV facilities by May 1, 2002.



regulations, which are inordinately time consuming and expensive and which will inappropriately delay a new and improved communications service to the public.<sup>3</sup>

Because of these factors, on May 30, 1997, NAB and MSTV jointly filed a Petition for Further Notice of Proposed Rule Making proposing the adoption of a rule preempting, under certain limited circumstances, state and local zoning and land use restrictions on the placement, construction and modification of broadcast transmission facilities.<sup>4</sup> The Commission instituted this proceeding on August 19, 1997, in order to consider:

“whether and in what circumstances to preempt certain state and local zoning and land use ordinances which present an obstacle to the rapid implementation of digital television (“DTV”) service. Such ordinances may also serve to unduly inhibit the resiting of antennas made necessary by the implementation of DTV or stand as an obstacle to the institution and improvement of radio and television broadcast service generally.”<sup>5</sup>

The Commission sought comment on a proposed rule which would do the following:

(i) establish time frames for state and local decisions concerning the placement, construction and modification of broadcast transmission facilities; (ii) preempt state and local regulation of tower lighting, painting and marking; (iii) preempt state and local regulation of radio frequency (“RF”)

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<sup>3</sup> NAB has previously made these concerns a matter of record with the Commission. See Petition for Partial Reconsideration, NAB, CC Docket No. 85-87 (seeking extension of preemption rules adopted in *Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations*, CC Docket No. 85-87, 59 RR2d 1073 (Released: Feb. 5, 1986)); *Preemption of Local Zoning Regulation of Satellite Earth Stations*, IB Docket No. 95-59, FCC 95-180, 2 CR 2175 (Released: May 15, 1995), ¶ 75 (declining NAB’s request to expand the scope of the proceeding beyond consideration of satellite earth stations).

<sup>4</sup> For purposes of these Reply Comments, “broadcast transmission facilities” is defined to mean towers, broadcast antennas, associated buildings, and all equipment cables and hardware used for the purpose of or in connection with federally-authorized radio or television broadcast transmissions. This same definition is utilized in the proposed rule attached as Appendix B to the *Notice*.

<sup>5</sup> *Notice*, ¶ 1.

interference; (iv) preempt state and local regulation concerning environmental or health effects of exposure to RF emissions; (v) preempt other state and local regulations which are not reasonably related to a clearly defined and expressly stated health or safety objective; (vi) require written decisions; and (vii) establish alternative dispute resolution procedures for the resolution of tower siting issues.

In all, approximately one hundred-seventy (170) comments were filed in this proceeding, with broadcasters generally supporting the proposed rule and state and local government commenters generally opposing the rule. Included in the comments supporting Commission action were comments filed on behalf of thirty-four (34) state broadcast trade associations and numerous individual broadcasters. Included in the comments generally opposing Commission action were the comments of many individual cities and counties. In addition, a substantial number of comments generally opposing Commission action were filed by single-issue oriented parties, including thirteen (13) sets of comments from individuals, government officials, and interest groups from the State of Vermont and another twenty-three (23) sets of comments from interest groups and governmental bodies concerned with aviation issues.

## II. INTRODUCTION

This proceeding is critical to swift implementation of DTV and possibly the eventual success of the service itself. More generally, it is an opportunity for the Commission to define "the rules of the game" with respect to *all* broadcast facility siting. These issues are fundamental to the roll-out of DTV and to the furtherance of broadcast service generally.

The Commission has determined that swift implementation of DTV is critical to the survival of free, over-the-air television.<sup>6</sup> Broadcasters have responded to this finding by committing the resources which are necessary to accomplish this goal.<sup>7</sup> Congress has expressed its affirmance of these measures.<sup>8</sup> Even the opponents of Commission action in this proceeding acknowledge the importance of DTV as well as the benefits that will accrue to their governments and their citizens from DTV.<sup>9</sup> As a result, no party seriously contests that swift roll-out of DTV is an important

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<sup>6</sup> See *Fifth Report and Order*, ¶ 3 ("Because of the advantages to the American people of digital technology — both in terms of services and in terms of efficient spectrum management — our rules must strengthen, not hamper, the possibilities for broadcast DTV's success."). See also *id.* ¶ 5 ("only if DTV achieves broad acceptance can we be assured of the preservation of broadcast television's unique benefit: free, widely accessible programming that serves the public interest.").

<sup>7</sup> In addition to the Commission's mandated roll-out, 24 television stations in the top ten markets have committed to construct their DTV facilities within 18 months of the adoption of the DTV order. The Commission has approved this proposal and has committed to review these stations' progress at six month intervals. *Fifth Report and Order*, ¶ 76. See generally the progress reports filed by broadcasters in response to the Commission's request.

<sup>8</sup> See, e.g., Balanced Budget Act of 1997; Letter from The Honorable John McCain, United States Senate, Chairman, Committee on Commerce, Science, and Transportation, dated November 19, 1997, to The Honorable William E. Kennard, Chairman, Federal Communications Commission ("The Commission's most important task in the digital television conversion process is to assure that digital television service will be launched according to schedule . . .").

<sup>9</sup> See, e.g., Comments of Concerned Communities and Organizations Consisting of the U.S. Conference of Mayors, et al., at 4 ("Municipalities generally support HDTV due to the competition it will bring in video delivery and in freeing up spectrum for public safety purposes."); Comments of the City of Chicago, at 5-6 ("It is to the City's benefit to bring HDTV to Chicago, both because of the potential benefit of the technology to millions of television viewers and because of the promised return of spectrum . . ."); Comments of the City of Philadelphia, at 9 ("The City has an interest in the rapid deployment of DTV because of the possibility that the prompt return of frequencies would allow the Commission to reallocate those frequencies for public safety and other uses of value to the City.").

federal public policy objective.

Likewise, no party seriously disputes the important public benefits offered by broadcast service generally. Congress has recognized these benefits by deeming the "rapid, efficient, Nation-wide . . ." delivery of radio communication services to be a matter of federal policy.<sup>10</sup>

What is at issue in this proceeding are measures which can and should be taken by the Commission to promote these important federal objectives. In considering these matters, the Commission should not be distracted by the heat and light emanating from some of the comments of the opponents of Commission action, the vast majority of which arises from a misperception of the scope of the proposed rule. Instead, the Commission should focus on the following core principles which are not the subject of serious dispute:

- (1) State and local governments often are faced with citizen objections to broadcast siting applications which are grounded in issues which are subject to comprehensive federal regulation, such as human exposure to RF emissions, RF interference, and tower marking, lighting and painting
- (2) Broadcasters often experience considerable state and local delays in connection with broadcast facility siting applications. Often these delays are caused by consideration of concerns involving issues subject to federal regulation.
- (3) Given the magnitude of the construction effort which will be required by DTV, it can fairly be expected that DTV construction applications will experience the same sort of delays that other broadcast applications experience. These delays will jeopardize the prompt roll-out of DTV and will impair the federal policy surrounding the implementation of DTV.

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<sup>10</sup> See Communications Act of 1934, as amended, § 1 (47 U.S.C. § 151).

These core principles lead to one conclusion -- the Commission should exercise its authority to adopt a narrowly-tailored rule that directs state and local authority review of broadcast facility siting applications. Although all parties agree that substantive zoning, land use and construction safety issues are best dealt with on a state and local level, targeted preemption of matters within the federal regulatory scheme will streamline local review of broadcast facility applications by allowing state and local governments to focus their review on matters within their expertise.

This proceeding presents an opportunity for the Commission to define which issues are within federal jurisdiction and which issues are within local jurisdiction. Doing so will aid state and local governments by eliminating some technical and policy issues which are subject to comprehensive federal regulation. It will also allow broadcast applications to be processed more quickly by local governments that are in good faith attempting to act on broadcast applications. Finally, it will aid citizens by adding clarity and certainty to local proceedings.

The immediate benefit of such an approach will be the swift implementation of DTV and the prompt and efficient delivery to the public of a new broadcast service. The long term benefit of such an approach may be, ultimately, the preservation of free, over-the-air television service as well as improved efficiency in the processing of broadcast applications. Such an approach will represent the fulfillment of the federal system, whereby the federal government promotes federal interests in the implementation of the broadcast service by deciding some issues which are the subject of comprehensive federal regulation and leaving other decisions to be made at the local level, with procedural guidance where necessary.

It is unfortunate that some parties opposing Commission action have characterized this

approach as an intrusion on state and local prerogative.<sup>11</sup> This view fails to appreciate that the advancement of broadcast service is a matter of federal policy — which, like it or not, state and local governments are bound to follow — and that, therefore, broadcast facility siting is a matter which implicates federal, state and local authority. Currently, due to a lack of coordination among these competing spheres of authority, siting applications often experience duplicative or contradictory regulatory treatment between jurisdictions. This proceeding is an opportunity for the Commission to address these dislocations by more clearly defining federal, state and local jurisdiction. Moreover, this proceeding has provided a useful dialogue on broadcast facility siting issues between broadcasters and state and local governments which will result in greater understanding by all of the interplay between federal and state/local concerns. In this light, the proposed rule is properly viewed as a cooperative — not adversarial — measure which can and should be taken.

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<sup>11</sup> See, e.g., Comments of the City of Chicago, at 35 (“such advances [to free broadcast television] should not come at the expense of the sovereignty of local governments . . .”) (emphasis added); Comments of The National League of Cities and the National Association of Telecommunications Officers and Advisers, at 8 (“The [Notice’s] scheme represents an unprecedented and grossly overbroad federalization of quintessentially state functions in violation of the Constitution’s guarantees of federalism” (quotation and citation omitted)); Comments of the City of Winston-Salem, North Carolina, at 1 (“Preemption is an unwanted usurpation of local authority.”).

### III. THE PROBLEM

As shown below, the fundamental problem at issue in this proceeding is that state and local government regulations and action often serve as impediments to the prompt delivery of federally-approved broadcast services. As a result, consumers — listeners and viewers — are hurt by the delay in the delivery of radio communications services. This is not an indictment of state and local procedures, but merely a statement of reality.<sup>12</sup> Section III.A. catalogues real-world examples of these impediments, as demonstrated by the comments. Section III.B. summarizes these impediments. Section III.C rebuts certain non-jurisdictional arguments raised by the opponents of the proposed rule relating to the existence of state/local impediments and the necessity for the proposed rule.

#### A. Examples Of State And Local Government Obstacles To Broadcast Facility Siting, Construction and Modification

In the *Notice*, the Commission sought comment on the nature and scope of broadcast siting issues encountered by broadcasters: “We seek a detailed record of the nature and scope of broadcast tower siting issues, including delays and related matters encountered by broadcasters, tower owners and local government officials.”<sup>13</sup> The comments filed by broadcasters disclose a wide variety of

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<sup>12</sup> To be sure, the record does recount examples of what would appear to be abuses of local authority vis-a-vis tower siting applications. *See, e.g.*, Comments of Ronald E. Castro and Jack W. Fritz II, d/b/a Results Radio of Sonoma, L.P., at 3-4; Comments of Thomas H. Moffit, Sr. and WVCH Communications, Inc., at 2; Comments of Named State Broadcast Associations, at 6; Board of Regents of the University of Wisconsin System, Attachment 1, at 1. The focus of this proceeding, however, is not only on “abuses,” but instead on real-world obstacles which are presented by the interplay of competing federal and state/local jurisdiction over broadcast facility siting issues and the lack of procedural constraints on state/local action.

<sup>13</sup> *Notice*, ¶ 19.

state and local government obstacles to the siting, construction and modification of broadcast facilities, including the following:<sup>14</sup>

1. **“Hurry up and wait”: Extraordinary delays**

- \* Station WVCH(AM), Springhouse, Pennsylvania, reports a ten year delay and 43 hearings before the local zoning board in connection with a request to construct a new AM radio station. The application has, thus-far, been unsuccessful. *Comments of Thomas H. Moffit, Sr. and WVCH Communications, Inc.*, at 2.
- \* Station KRPQ(FM), Rohnert Park, California, reports that, as of the submission of its comments, it has taken ten months and four public hearings in a thus-far unsuccessful attempt to obtain approval to relocate an existing tower necessitated by the loss of its original tower lease. *Comments of Ronald E. Castro and Jack W. Fritz II, d/b/a Results Radio of Sonoma, L.P.*, at 4.
- \* The permittee of station WBHX(FM), Tuckerton, New Jersey, an unbuilt class A FM station, reports that it has been stymied for over two years to zoning approval necessary for the construction of the station. *Comments of Richard L. Harvey, WBHX*, at 3.
- \* Station WFUV-FM, Bronx, New York, reports that its effort to construct a new tower for its existing noncommercial station has been delayed for three and a half-years due to opposition from adjoining landowners concerning the appearance of the tower. *Comments of Fordham University*, at 2.8.
- \* Station WBUX(AM), Doylestown, Pennsylvania has spent five years attempting to obtain approval from the County

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<sup>14</sup> As anticipated by NAB/MSTV in their Comments, it is clear that not all broadcasters that are currently experiencing local difficulties with respect to tower issues have submitted comments in this proceeding. NAB has been informed in several instances of broadcasters that did not want to participate in this proceeding out of fear that such participation would either cause outright reprisals from local governments or would make ongoing negotiations more difficult. The Commission should take note of the political nature of local processes in evaluating the record in this proceeding.



Board of Supervisors to make FCC-approved modifications to its existing tower. Because the Board has refused to render a final decision on the application, WBUX(AM) was forced to seek mandamus from the state court. The court's decision still has not been issued. *Joint Comments of the Named State Broadcasters Associations*, at 5-6.

- \* The permittee of unbuilt WMMF-TV, Fond du Lac, Wisconsin, reports an eleven year delay in constructing a new television station. The State Department of Transportation and local advocacy groups have opposed construction of the tower required by the new station and have litigated the matter before the FAA and the state's Bureau of Aeronautics. *Comments of Harry J. Pappas, Stella A. Pappas, and Skycom, Inc.*, at 3-5.
- \* Station KGMB(TV), Honolulu, Hawaii, reports that it is currently negotiating to move the station's free standing tower to an elevated position away from the dense population of Honolulu. The station has been unable to reach agreement with local officials because of the officials' lack of urgency in negotiating the matter. This inability of local officials to come to a negotiated agreement with the licensee has continued for eight years. *Comments of Garry Schmedding, President - Broadcast Group Lee Enterprises, Incorporated*, at 1-2.
- \* Station WNNJ-FM, Newton, New Jersey, reports that it took six years for its three separate applications for zoning approval to relocate a radio station tower to be rejected by local authorities. *Comments of the New Jersey Broadcasters Association*, at 5; *Comments of Michael B. Levine, President, Glicker Broadcasting, Inc. and Group M Communications, Inc.*, at 3.
- \* Station WLNE(TV), New Bedford, Massachusetts — Providence, Rhode Island, reports that it took three years for its application to relocate its existing antenna to a nearby antenna farm to be rejected by local authorities. *Comments of Freedom Communications, Inc.*, at 4.
- \* Station WAWZ(FM), Zarephath, New Jersey, reports that it has been embroiled in a dispute concerning the relocation of

its existing 226 foot tower for ten years. The new tower was proposed to be located within 100 feet of the existing tower. Thus far, the application has not been approved. *Comments of Pillar of Fire*, at 1-2.

- \* Station WAVE(TV), Louisville, Kentucky, reports that it took six years to receive final approval from local authorities to construct its broadcast facilities. This process included litigation before the Kentucky Supreme Court. FCC and FAA approvals were obtained in less than one year. *Comments of Cosmos Broadcasting Corporation*, at 2.
- \* Station WSHH-TV, Marlborough, Massachusetts, reports that it went through three and a half years of local hearings (including 20 formal meetings of local boards) in its unsuccessful application to increase the height of its existing tower by 200 feet. *Comments of Silver King Broadcasting of Massachusetts, Inc.*, at 3-4.
- \* Stations WEAS(AM) and WEAS-FM, Savannah, Georgia, reports that their effort to relocate their towers (necessary because of the dredging of the adjacent harbor) was delayed because the city's planning committee meets only every six months. Eventually, the tower resiting was approved, upon the condition that the licensee plant "maple trees not less than six inches at the base" every thirty feet around the circumference of the "ground system." More than one year had elapsed from the time of the FCC construction permit to the issuance of the local building permit. *Comments of Sounds of Service Radio, Inc.*, at 4-5.
- \* Fant Broadcasting reports that the construction of WEOK(AM), Town of Lloyd, New York, was held up for nearly four years because of concerns regarding the visual impact of the station, even though the visual impact study reported no visual impact by the construction. *Comments of Anthony J. Fant, Fant Broadcasting Company of Ohio, and Fant Broadcasting Company of Massachusetts*, at 4-5.

## 2. Expense

- \* Station WVCH(AM), Springhouse, Pennsylvania, reports that it has spent \$350,000 in legal fees and \$750,000 for land and broadcasting and transmission equipment in a thus-far, unsuccessful attempt to obtain approval for a building permit to construct an AM station. The station estimates that it has lost potential revenue of approximately \$8 million during the delay caused by this process. *Comments of Thomas. H. Moffit, Jr., and WVCH Communications*, at 3.
- \* Station WAWZ(FM), Zarephath, New Jersey, reports that it has spent \$650,000 over ten years in an attempt to obtain local approval to replace its existing tower with a new tower to be placed 100 feet away. *Comments of Pillar of Fire*, at 2.
- \* Station WNNJ-FM, Newton, New Jersey, reports that it has spent \$100,000 for three applications for three different proposed sites to relocate its radio station tower. All applications were ultimately rejected. *Comments of the New Jersey Broadcasters Association*, at 5; *Comments of Michael B. Levine, President, Glicken Broadcasting, Inc. and Group M Communications, Inc.*, at 3.
- \* Fant Broadcasting reports that an Environmental Impact Study is often necessary in New York when constructing a tower. Such studies typically cost between \$100,000 and \$250,000, and the process takes approximately 6 to 9 months to complete. *Comments of Anthony J. Fant, Fant Broadcasting Company of Ohio, and Fant Broadcasting Company of Massachusetts* at 3-4.
- \* Station KRPQ(FM), Rohnert Park, California, reports that it has, thus far, spent \$100,000 in an unsuccessful effort to relocate a tower for its AM facility. *Comments of Ronald E. Castro and Jack W. Fritz II d/b/a Results Radio of Sonoma, L.P.*, at 3-4.
- \* Station WLNE(TV), New Bedford, Massachusetts, reports that it cost the station “hundreds of thousands of dollars” in connection with its unsuccessful bid to relocate its existing antenna to a nearby antenna farm. *Comments of Freedom Communications, Inc.*, at 4.

- \* Non-commercial station WFUV-FM, Bronx, New York, reports that it has expended approximately \$160,000 in its attempt to relocate its tower to a site approved by the FCC. This matter is currently being appealed to the New York courts by an adjoining landowner. *Comments of Fordham University*, at 12.
- \* Station WBUX(AM), Doylestown, Pennsylvania, reports that it has spent approximately \$100,000 in legal and consulting fees in connection with its, thus far, unsuccessful application to increase the height of its existing tower. This expense has brought the broadcaster to the brink of financial ruin. The issue is currently before the state courts. *Joint Comments of Named State Broadcast Associations*, at 5-6.
- \* Station WVPT, Staunton, Virginia, reports that the county has recently adopted a new telecommunications ordinance that imposes added inspection and landscaping requirements upon new towers. These requirements are estimated to cost the station in excess of \$50,000 when it begins its DTV conversion. *Comments of Association of America's Public Television Stations and the Public Broadcasting Service*, at 7-8.
- \* *See Comments of Champlain Valley Telecasting, Inc.*, at 5 (permittee forced to spend \$500,000 to upgrade inferior tower).
- \* *See Comments of Silver King Broadcasting of Massachusetts, Inc.* at 4. (over \$120,000 in legal fees and employee time in three and a half year ordeal)

### **3. Public interest determinations by local authorities**

- \* The permittee of WMMF-TV, Fond du Lac, Wisconsin, reports that its zoning request to construct television tower was denied, among other reasons, because, in the city's judgment, the station's programming would not benefit the community. *Comments of Harry J. Pappas, Stella A. Pappas, and Skycom, Inc.*, at 6.
- \* Station WNVR(AM), Vernon Hills, Illinois, reports that its

tower relocation application was opposed because, among other reasons, the radio station would not employ anyone from McHenry County, Illinois, where the towers were to be located. Another reason cited was that the Polish language station's programming would not, according to local officials, benefit anyone in the county. *Comments of Polnet Communications, Ltd.* at 4, n. 3, 5.

#### 4. RF interference, RF radiation and other “health” objections

- \* Station WLNE(TV), New Bedford, Massachusetts, reports that residents opposed the relocation of its television antenna to a nearby antenna farm citing fears of exposure to RF radiation — despite the fact that the proposed tower complied with the FCC's RF guidelines. After three years, the application was denied. *Comments of Freedom Communications, Inc.*, at 4.
- \* Station WVCH(AM), Springhouse, Pennsylvania, reports that, of 4300 pages of testimony relating to objections to construction of the proposed AM tower, approximately 86% of those pages deal with concerns regarding RF emissions, despite the proposed tower's compliance with FCC standards. *Comments of Thomas H. Moffit, Sr., and WVCH Communications, Inc.*, at 2.
- \* Station WLNE(TV), New Bedford, Massachusetts, reports that one of the reasons for rejection of its application to relocate its existing antenna to a nearby antenna farm was the opposition of local residents who complained of possible RF radiation. *Comments of Freedom Communications, Inc.*, at 4.
- \* Station WAWZ(FM), Zarephath, New Jersey, reports that concerns with RF emissions were cited as one of the reasons for prohibiting the construction of a new tower to be located within 100 feet of the old tower. *Comments of Pillar of Fire*, at 2.
- \* Station KRPQ(FM), Rohnert Park, California, reports that concerns with RF emissions were cited as one of the reasons for opposing the relocation of its existing tower. *Comments of Ronald E. Castro and Jack W. Fritz II, d/b/a Results Radio of Sonoma, L.P.*, at 14, 16, 17.

- \* Station WJFW-TV, Rhinelander, Wisconsin, reports that concerns with RF emissions were raised by opponents of the construction of its new tower. *Joint Comments of Named State Broadcast Associations*, at 7.
- \* Mid Atlantic Network, Inc., licensee of WINC-FM, Winchester, Virginia, reports that it sought approval to construct an auxiliary tower. A local property owners association objected asserting that the cancer rate among local citizens was "high." The county imposed conditions upon the construction which severely limits the use of the tower by restricting the number of antennas to four and restricting it to "back up purposes only." *Joint Comments of North Carolina and Virginia Broadcasters Associations*, at 5-6.
- \* Goetz Broadcasting Corporation reports that an FCC-approved FM station could not be constructed in Whitewater, Wisconsin, as a result of opposition orchestrated by an adjoining landowner for personal reasons. The town board denied its approval of the construction because local residents appeared at the meeting and complained of the potential danger of RF radiation. Scientifically suspect RF studies from the former Soviet Union were presented as "evidence" of the danger of such hazards. The Whitewater station was eventually constructed far below its originally authorized parameters and co-located, at a height of 200 feet, with an AM station's transmitter. *Comments of Goetz Broadcasting Corporation*, at 2, 3.
- \* Station WSHH-TV, Marlborough, Massachusetts, reports that local residents opposed its application to increase the height of its existing tower by 200 feet because of fears of RF radiation and interference. Included in these objections was an assertion that one citizen's computer monitor continuously displayed WSHH's programming, even when the monitor was turned off. Because of these objections, the station was forced to undergo a three-and-a-half year proceeding, including some 20 formal meetings of local boards, which resulted in denial of the application. *Comments of Silver King Broadcasting of Massachusetts, Inc.*, at 3, 4.

- \* Fant Broadcasting, by and through its land use attorneys, describe the particular zoning and land use problems encountered by applications to site broadcast and cellular towers. Under the intensive review required by New York law, the commenters report that local boards usually focus on two issues — RF emissions/interference and the aesthetic impact. *Comments of Anthony J. Fant, Fant Broadcasting Company of Ohio, and Fant Broadcasting Company of Massachusetts*, at 2.
- \* Fant Broadcasting describes its experience in applying for local authority to build a new television station, WAQF-TV, Batavia, New York. The station was denied a permit to construct the station because of fears of the adverse effects of RF radiation. This decision came despite the testimony of an expert on the subject with no rebuttal from a similarly qualified witness. *Comments of Anthony J. Fant, Fant Broadcasting Company of Ohio, and Fant Broadcasting Company of Massachusetts*, at 3-4.

## 5. Aesthetics

- \* Station WFUV-FM, Bronx, New York, reports that its proposed relocation of its tower has been delayed because of aesthetic concerns. The licensee received its construction permit on December 7, 1992, and, after obtaining a local building permit, the licensee began construction of the tower. When the tower was half completed, the New York City Commissioner of Buildings halted construction in response to a complaint from the neighboring New York Botanical Garden (“NYBG”), which objected to the tower on aesthetic grounds. The Commissioner of Buildings ruled, based upon extensive documentation, that the new tower was permissible. NYBG has appealed, losing at the Commission of Buildings and at the state’s Supreme Court (trial) level. Now, the half-built tower remains, pending NYBG’s latest appeal before New York’s highest court. *Comments of Fordham University*, at 10.
- \* Station WFLI-TV, Cleveland, Tennessee, was denied a request to relocate its television tower to a tract of land surrounded by six pre-existing towers. The county board of zoning appeals denied approval for the new tower for

aesthetic reasons even though it was to be surrounded by the six other towers. *Comments of Ying Hua Benns, President, Station WFLI, Inc.*, at 3.

- \* Fant Broadcasting's attorneys report that aesthetic review is one of the principal areas of regulation in the state of New York, and they report their experience with a broadcaster's attempt to construct WEOK(AM). WEOK(AM) was required by the Planning Board of the Town of Lloyd to provide an Environmental Impact Study to evaluate the visual impact of a new tower from nine different locations. Upon receiving the study which demonstrated that there would be no adverse impact, the Planning Board denied WEOK(AM)'s application. The Planning Board's decision was annulled at the trial level and the intermediate appellate court agreed. The Planning Board appealed to the state's highest court, the New York Court of Appeals. Since the Planning Board's decision was based on nothing more than opinions of local citizens and since the only record of the visual impact was the study supporting the station, the Court of Appeals also found that the Planning Board's decision was in error. *Comments of Anthony J. Fant, Fant Broadcasting Company of Ohio, and Fant Broadcasting Company of Massachusetts*, at 4-5.
- \* Station WAWZ(FM), Zarephath, New Jersey, reports that aesthetic concerns were cited as one of the reasons for prohibiting the construction of a new tower (to be located within 100 feet of the old tower). *Comments of Pillar of Fire*, at 2.
- \* Station KRPQ(FM), Rohnert Park, California, reports that aesthetic concerns were cited as one of the reasons for opposing the relocation of its existing tower. *Comments of Ronald E. Castro and Jack W. Fritz II, d/b/a Results Radio of Sonoma, L.P.*, at 15.

## 6. "Laundry List" (NIMBY) Objections

- \* Station WVCH(AM), Springhouse, Pennsylvania, reports that its AM tower construction application was opposed during local hearings by citation to concerns such as "ugly towers, flashing lights, music and news vibrated via bedsprings, washing machines, toasters and children being electrocuted



while playing ball with metal bats.” *Comments of Thomas H. Moffit, Sr. and WVCH Communications, Inc.*, at 6.

- \* The permittee of an Oregon, Illinois, FM station has been unable to construct its tower in an industrial park because of concerns expressed by residents that tower would lower land values and cause interference within the industrial park area. *Comments of Goetz Broadcasting Corporation*, at 2.
- \* Student-run, state-supported FM radio station WSUM(FM), Madison, Wisconsin, reports that, although an FCC construction permit was granted in October 1996, it will be at least July 1998 before the tower can be constructed. Despite approval by the town’s land use committee, local citizens are continuing to object on the basis of health, safety, property values and aesthetic issues. The University has also found that the chairman of the town board has been able to single-handedly hold up the approval process. Also, the local zoning board has recently enacted a moratorium on all tower construction. *Board of Regents of the University of Wisconsin System*, Amendment 1, at 1.
- \* Station WJFW-TV, Rhinelander, Wisconsin, reports that it sought approval to construct a new tower in a rural area more than a mile from the nearest residence. Local citizens objected, citing radiation, annoyance by pulsating lights, air safety, nervous disorders, alcoholism, and the “killing of cattle due to stray voltage.” Between January and August 1997, the station appeared before the board each month to present scientific data to demonstrate that the tower facility posed no risk to the residents. Nonetheless, the board denied the request without issuing a written decision or articulating specific reasons except to say that there would be no new towers in Taylor County. Because of this, the station had to abandon its efforts to build a new tower. *Joint Comments of Named State Broadcast Associations*, at 7.
- \* Station WBHX(FM), Tuckerton, New Jersey, reports that, in an effort to site a transmitter for its authorized station, the permittee ran into objections relating to health, safety of children, and property values. The local zoning board questioned the logic behind the FCC’s rules and hired a consultant to study the rules to determine how to dispute the